

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Emmitt Grier, Jr., :
Plaintiff :
v. : C.A. 05-05 ERIE
:
Edward J. Klemm, et al., :
Defendants :

**RESPONSE FILED ON BEHALF OF DEFENDANT, OFFICE OF THE
DISTRICT ATTORNEY, IN OPPOSITION TO PLAINTIFF'S REQUEST
FOR EXTENSION OF TIME TO JUDGE'S ORDER**

AND NOW, comes defendant, Office of the District Attorney, and files this response to plaintiff's request for extension of time to Judge's Order, stating in support thereof the following:

1. Plaintiff, Emmitt Grier, Jr., (hereinafter "plaintiff") filed the above referenced civil rights lawsuit and named, among other parties, the Office of the District Attorney (hereinafter "defendant").
2. On January 23, 2006, the undersigned filed a motion to dismiss and supporting brief on behalf of the defendant, with a certificate of service attached to both the motion and brief indicating that a copy of the motion and brief was served upon plaintiff on January 23, 2006, via First Class mail, postage pre-paid, at the following address: Emmitt Grier, Jr., EJ-7879, SCI-Mahanoy, 301 Morea Road, Frackville, PA 17932.
3. The Honorable Susan Paradise Baxter issued an Order on January 30, 2006, requiring that plaintiff file a response to defendant's motion to dismiss, no later than February 14, 2006.

4. The undersigned's secretary, who executed the attached affidavit, indicates she personally undertook service of the motion and brief via sending the motion and brief by United States, First Class mail, postage pre-paid on January 3, 2006, and that no notice of undeliverable return was received at our office from the United States Postal Service, at any time. (A copy of the affidavit of Linda J. Cooney is attached hereto and marked as exhibit "A".)
5. For the reasons stated above, it is believed and therefore averred that plaintiff did, in fact, receive a copy of defendant's motion and brief that was served by mail on January 23, 2006, and therefore it is requested that plaintiff's request for extension of time to Judge's Order be denied.

WHEREFORE, it is respectfully requested this Honorable Court enter an Order denying plaintiff's request for extension of time to file a responsive pleading.

Respectfully submitted,

S/Matthew J. McLaughlin
Matthew J. McLaughlin
246 West Tenth Street
Erie, Pennsylvania 16501
(814) 454-1010
Counsel for defendant, Office of the
District Attorney

Dated: March 13, 2006

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of defendant, Office of the District Attorney's response in opposition to plaintiff's request for extension of time to Judge's Order was served on March 13, 2006, upon plaintiff, Emmitt Grier, Jr., via United States, First Class mail, postage pre-paid, and upon all counsel of record via electronic filing, in accordance with the applicable Rules.

By: S/Matthew J. McLaughlin
Assistant Erie County Solicitor
246 West Tenth Street
Erie, Pennsylvania 16501
(814) 454-1010
Counsel for defendant, Office of the District Attorney

Dated: March 13, 2006